

Message Text

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ACTION DLOS-09

INFO OCT-01 IO-13 ISO-00 AF-10 ARA-10 EA-10 EUR-12
NEA-10 ACDA-12 AGRE-00 AID-05 CEA-01 CEQ-01 CG-00
CIAE-00 COME-00 DODE-00 DOTE-00 EB-08 EPA-01
SOE-02 DOE-15 FMC-01 TRSE-00 H-01 INR-10 INT-05
JUSE-00 L-03 NSAE-00 NSC-05 NSF-01 OES-09 OMB-01
PA-01 PM-05 SP-02 SS-15 ICA-11 /190 W
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FM USMISSION USUN NEW YORK
TO SECSTATE WASHDC 2966

C O N F I D E N T I A L SECTION 01 OF 02 USUN NEW YORK 03289

FROM LOSDEL

E.O. 11652: GDS
TAGS: PLOS
SUBJECT: LOS CONFERENCE DAILY SUMMARY - AUGUST 22

SUMMARY: USEFUL DISCUSSION TOOK PLACE IN THE US-SOVIET
DISPUTE SETTLEMENT WORKING GROUP AND IN COMMITTEE THREE.
THE NG-2 EXPERTS AND NG-6 ALSO MET. THE DRAFTING COMMITTEE
ESTABLISHED LANGUAGE TEAMS TO ORGANIZE THE ICNT VERSIONS.
END SUMMARY.

1. THE SOVIET-US WORKING GROUP ON COMPULSORY DISPUTE SETTLE-
MENT (CDS) CONTINUED DISCUSSIONS ON THE CDS PORTIONS OF AN
OVERALL PACKAGE OF COMPROMISE POSITIONS. WITH REGARD TO
BOUNDARY DELIMITATION DISPUTES, THE GROUP AGREED ON A TEXT
FOR SUBMISSION TO JUDGE MANNER (FINLAND, CHAIRMAN OF NG-7)
WHICH WOULD EXEMPT ALL PAST DISPUTES FROM ANY COMPULSORY
AND BINDING SETTLEMENT WHILE SUBJECTING ALL FUTURE DISPUTES
TO COMPULSORY CONCILIATION. THIS TEXT FAVORS THE ORIGINAL
SOVIET POSITION OF NO COMPULSORY SETTLEMENT OF MARITIME
BOUNDARIES. US REPRESENTATIVES WOULD BE FREE TO CONTINUE
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THE NEUTRAL ROLE WHICH THEY HAVE SO FAR PLAYED. HOWEVER,
IN THE CONTEXT OF NEGOTIATIONS THEY WOULD BE EXPECTED TO
FAVOR THE TEXT AGREED TO WITHIN THE WORKING GROUP. THE
SOVIET REPRESENTATIVES AGREED NOT TO OPPOSE ANY US ATTEMPT
TO STRENGTHEN JUDICIAL REVIEW OF ACTS AND REGULATIONS OF
THE SEABED AUTHORITY. THEY AGREED FURTHER TO STUDY ANY
PARTICULAR PROPOSALS WHICH THE US MAY MAKE WITH A VIEW TO

ACTIVELY SUPPORTING THEM. FINALLY, IT WAS AGREED THAT SCIENTIFIC RESEARCH DISPUTES SHOULD BE CONSIDERED IN CONNECTION WITH OTHER PROPOSALS ON MARINE SCIENTIFIC RESEARCH.

2. AT THE NG-2 EXPERTS' MEETING, AMBASSADOR KOH SUMMARIZED THE CONSENSUS WHICH HAD ARISEN WITH REGARD TO THE APPLICATION FEE ISSUE: THAT THE PURPOSE OF THE FEE WAS NOT REVENUE BUT COVERAGE OF THE COST OF EVALUATING AN APPLICATION AND THAT A REVIEW MECHANISM WAS DESIRABLE IN ORDER TO ASSURE THAT THE APPLICATION FEE WAS COVERING THE EVALUATION COST.

THE GROUP ALSO DISCUSSED THE ANNUAL FIXED FEE FOR MINING. NORWAY AND SEVERAL MEMBERS OF THE G-77 ADVOCATED BOTH A BONUS PAYMENT AND AN ANNUAL FEE. THE US, EEC, AND JAPAN STATED THAT THERE WAS NO NEED FOR SUCH FEES. JAGOTA (INDIA) RESTATED HIS IDEA FOR A \$60 MILLION FRONT-END FEE, BUT WHEN INFORMED BY THE US DELEGATION THAT THIS PROPOSAL PRODUCED RATES OF RETURN LESS THAN 10 PERCENT, HE EXPRESSED A WILLINGNESS TO MODIFY THE PROPOSAL.

THE USSR SAID IT WOULD ACCEPT AN "AREA FEE" TO ENSURE DILIGENCE BUT NOT A FEE TO MINE THE COMMON HERITAGE. THE SOVIETS PROPOSED TO COMBINE THE ANNUAL FEE WITH THE OBLIGATION OF STATES TO FUND THE AUTHORITY BUT THIS SUGGESTION WAS NOT CLEARLY FORMULATED.

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3. JAGOTA CLAIMED THERE WAS A CONSENSUS (AT THE RECENT AALCC MEETING IN NEW DELHI) THAT A BONUS PAYMENT AND ANNUAL FIXED FEE TO MINE WERE APPROPRIATE CHARGES. THE US AND SEVERAL OTHER INDUSTRIAL COUNTRIES WHO WERE AT THE MEETING STRONGLY DISAGREED. FURTHERMORE THEY SAID THAT FRONT-END CHARGES (LIKE THE ANNUAL FIXED FEE TO MINE) WERE OBJECTIONABLE BOTH ON THEORETICAL GROUNDS AND ON THE PRACTICAL GROUND THAT IT WOULD BE VERY DIFFICULT TO ATTRACT SEABED MINERS IF THEY FACED HIGH PAYMENTS TO BE MADE REGARDLESS OF PROFIT. THE EXPERTS' GROUP WILL RECONVENE AUGUST 23 TO DISCUSS FURTHER THE ANNUAL FIXED FEE AND THE PRODUCTION CHARGE.

4. NG-6 (CONTINENTAL SHELF) MET AND ADJOURNED WITHOUT ANY SPEAKERS TAKING THE FLOOR. THIS REFLECTED RECOGNITION OF ONGOING CORRIDOR CONSULTATIONS AND THE FUTILITY OF OPEN DEBATE AT THIS PARTICULAR POINT ON THE SUBJECT.

5. THIRD COMMITTEE - AT AN INFORMAL MEETING CHAIRED BY VALLARTA (MEXICO), CATEGORY II PROPOSALS WERE DISCUSSED. ARTICLE 212 (2) BIS (RELATING TO REGIONAL PORT ENTRY

ENFORCEMENT PROCEDURES) AND ARTICLE 222 (MEASURES RELATING TO MARITIME CASUALTIES TO AVOID POLLUTION) WERE CONSIDERED TO HAVE ACHIEVED CONSENSUS. VALLARTA WILL ADVISE CHAIRMAN YANKOV THAT THESE CAN NOW BE INCLUDED AMONG THE CATEGORY I AMENDMENTS. (TANZANIA WAS NOT PRESENT AT THIS MEETING AND MAY BE EXPECTED TO EXPRESS STRONG RESERVATIONS TO ARTICLE 212 (2) BIS WHEN THIS MATTER COMES UP IN THE FORMAL MEETING OF COMMITTEE III.)

6. EFFORTS TO AGREE ON A SIMILAR DISPOSITION FOR ARTICLES 221 (6), ARTICLE 227 AND ARTICLE 231 MET WITH CONTROVERSY. DISCUSSION ON THESE PROVISIONS WAS TO BE CONTINUED LATER AT A SMALL INFORMAL NEGOTIATING GROUP.

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C O N F I D E N T I A L SECTION 02 OF 02 USUN NEW YORK 03289

FROM LOSDEL

OPPOSITION TO ARTICLE 221 (6) CENTERED MAINLY ON THE INSERTION OF THE PHRASE "INCLUDING ARREST". OBJECTIONS WERE RAISED BY PERU, LIBERIA, AND SINGAPORE, WHILE IRAQ AND EGYPT ALSO COMPLAINED AND, IN ADDITION, SOUGHT RE-INSERTION OF THE PHRASE "GROSS AND FLAGRANT".

AFTER THE US EXPLAINED THE PURPOSE OF THE AMENDMENT TO ARTICLE 221 (6), IT WAS SUPPORTED BY SPAIN, MALAYSIA, CANADA, ICELAND, NEW ZEALAND, SOMALIA AND FRANCE.

7. IN RESPONSE TO A REQUEST FOR CLARIFICATION OF THE ARTICLE 227 RIGHT TO INSPECT MORE THAN CERTIFICATES WHEN A COASTAL STATE SUSPECTS A VESSEL OF CAUSING A DISCHARGE,

VALLARTA SAID THERE WAS NO QUESTION THAT EXAMINATION MAY GO BEYOND CHECKING CERTIFICATES WHEN THERE IS A DISCHARGE INVOLVED. CUBA SUPPORTED THIS INTERPRETATION. IRAQ CALLED ATTENTION TO THE CATEGORY III PROPOSAL BY SEVERAL ARAB STATES TO REQUIRE DISPUTE SETTLEMENT PROCEDURES TO APPLY WHEN THERE WAS A REFUSAL TO RELEASE A VESSEL UNDER ARTICLE 227.

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A SUGGESTION TO ADD "AND OTHER DOCUMENTS" AFTER "RECORDS" IN ARTICLE 227 WAS ADOPTED WITHOUT OBJECTION.

8. THERE WAS A WIDE DIVERGENCE OF VIEWS REGARDING ARTICLE 231. FRANCE AND PERU WANTED TO CHANGE THE PHRASE "INTERNAL WATERS" TO "TERRITORIAL SEAS" AND WERE SUPPORTED BY ELEVEN OTHER STATES. THE US PREFERRED THIS SOLUTION BUT AFTER TAKING NOTE OF THE STRONG OPPOSITION WHICH DEVELOPED IT CONSIDERED THE MODIFICATION (ALLOWING OTHER THAN MONETARY PENALTIES FOR DISCHARGES WHICH ARE THE RESULT OF ACTS OF WILLFUL AND SERIOUS POLLUTION) TO BE A REASONABLE COMPROMISE. EIGHTEEN OTHER DELEGATES SUPPORTED THIS COMPROMISE.

9. FINALLY, THE DRAFTING COMMITTEE, ESTABLISHED INDIVIDUAL LANGUAGE GROUPS TO COMMENCE TECHNICAL WORK ON THE ICNT. SIX SECTIONS HAVE BEEN DESIGNATED - ONE FOR EACH OF THE OFFICIAL UN LANGUAGES - WITH THE US CHAIRING THE ENGLISH LANGUAGE TEAM. THE WORKING GROUPS WILL MEET SEVERAL TIMES THIS WEEK TO RESOLVE TEXTUAL DISCREPANCIES AND STANDARDIZE INTERNAL REFERENCES.

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